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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re B.P., et al., Persons Coming Under the
Juvenile Court Law.

B219324
(Los Angeles County
Super. Ct. No. CK77931)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

BRIAN P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Emily A. Stevens, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, James M. Owens, Assistant County Counsel, David Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

* * * * *

Brian P. (father) appeals from the juvenile dependency court's jurisdictional and dispositional orders pertaining to his three children. Without reaching father's constitutional challenge to Welfare and Institutions Code¹ section 300, subdivision (a), we find that substantial evidence supports the court's jurisdictional order and that there is no basis for reversing the dispositional order. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 30, 2009, respondent Los Angeles County Department of Children and Family Services (the department) filed a petition under section 300, subdivisions (a) and (b), on behalf of father's two daughters, B.P. (age 13) and Z.P. (age 10), and his son, R.P. (age 7). As sustained, the petition alleged under section 300, subdivision (a), that father physically abused the children by hitting them and grabbing their necks, causing them unreasonable pain and suffering. Under section 300, subdivision (b), the petition alleged that father has an unresolved history of alcohol abuse, which renders him unable to provide regular care of the children, and that he and the children's mother (who is not a party to this appeal) have an unresolved history of domestic violence, including father striking the mother with his fists in the presence of the children, throwing a telephone at her, and tearing her shirt and scratching her.

The department's detention report stated that the petition was filed following a report of general neglect of the children and verbal and emotional abuse by the mother, which she denied. Prior to this referral, there had been 13 other referrals regarding the family going back at least ten years, which were largely unsubstantiated. The department reported that father and the children's mother, who never married and had separated about five years earlier, have ongoing incidents of domestic violence in front of the children, despite not living together. At the time of the petition, the children and their mother were living with the maternal grandfather, who was abusive to the children and

¹ Unless otherwise noted, all statutory references shall be to the Welfare and Institutions Code.

their mother. Mother and the children previously lived in shelters for victims of domestic abuse to protect themselves from father, who had moved to Visalia, California. The family had an open family law case, pursuant to which mother had custody of the children, father was to pay child support, and mother had a restraining order against father.

The social worker privately interviewed each of the children following the latest referral. B.P. stated that she did not like visiting father, that she wanted to “disown” him because he hits her, and that he once threw a chair at her that left a visible scar on her forehead. She denied seeing her mother use drugs, but stated that father “smells like cocaine.” Z.P. reported that father grabs her and her siblings behind their necks, that it leaves a red mark, and that it makes her and R.P. cry because “it hurts really bad.” Z.P. stated that she is afraid of father when he puts his hand around her neck. She also stated that “she sees her dad drunk and that he has been arrested for it.” Her mother and father are still fighting, and “there is a lot of yelling” between them that makes Z.P. cry. R.P. was uncommunicative during his interview.

Father admitted he has a problem with alcohol and that he has participated in a substance abuse program. When asked about grabbing the children’s necks, he referred to that act as his “clutch,” and stated that it was no big deal. He also admitted that he and the children’s mother had conflicts that were affecting the children and “that it needs to stop.” Father’s lengthy criminal history includes convictions for inflicting corporal injury on a spouse/cohabitant and a DUI, and deferred judgments on drug charges.

On June 25, 2009, the parents and children attended a team decision meeting at the department’s office. The children declined to make any comments during the meeting, but in private Z.P. told the social worker that she was afraid to say anything in front of father because he would get mad. After the children were excused from the meeting, the parents focused only on themselves, showing no concern for the children. After this was pointed out to the parents, they continued to degrade each other and to identify the other’s flaws. Following the meeting, the children were detained and placed into foster care.

The juvenile court ordered the children to remain detained, but instructed the department to address returning the children to their mother. The department was ordered to provide family reunification services, and father was allowed to have monitored visits with the children.

In its August 2009 jurisdiction/disposition report, the department reported that in further interviews with the children, B.P. stated that father hit her and her siblings ““mostly all the time,”” that it hurt a lot and left marks and bruises, and that he grabbed them by the neck. She also stated that father is ““always drinking beer.”” Z.P. stated that father hit her and her siblings and “beats up mom,” that he grabs the children’s necks “really hard” from behind, which makes R.P. cry, and that he yells at them and slaps them, sometimes with a belt. Z.P. stated that the physical abuse still happens when she and her siblings visit father. She stated, “I’m scared because he’s stronger than me, he could leave us bruises, could hurt us very bad. I know because I see how my mom was. She told us everything he does. Once she took pictures of what he did and showed it to us.” Z.P. also stated that father does not drink anymore and that he promised her he would not drink anymore. She stated that when father does drink, ““he’s crazy, gets out of hand, gets in fights, hits people.”” R.P. denied being hurt when father grabbed his neck. R.P. stated that father yelled and got mad when drinking beer, but that he had not seen him drinking lately. All three children reported seeing physical violence between their mother and father.

The children’s mother confirmed that father grabbed the children by their necks, and reported that R.P. tells her all the time that he is afraid of father. She also confirmed a long history of domestic violence between herself and father, both during times of cohabitation and when living separately, and that some of the violence had occurred in front of the children. She reported an incident in which father had grabbed her in the chest area causing redness and tearing her blouse; she called the police after this incident. She also reported an incident in which father took the telephone receiver out of her hand and hit her on the head with it. She stated that the domestic violence often occurred when

father had been drinking, and that he used to drink a 12-pack of beer a day. Because she no longer lived with father, she did not know if he continued to abuse alcohol.

Father denied physically punishing the children or using corporal punishment. He did admit engaging in domestic violence with the children's mother in front of the children. When asked how many domestic violence related arrests he had had, father responded, "Oh goodness, I don't even know." Father also admitted having had a drinking problem, and drinking up to a case of beer (24 beers) sometimes at one sitting, but stated that he had been sober since January 2009. He reported attending Alcoholics Anonymous meetings four times a week, but did not have a sponsor. He also admitted having used methamphetamine in the past with the children's mother while the children were sleeping.

The paternal grandmother reported that the yelling and violence between father and the mother began when their first child was a baby, and stated, "These poor kids they're listening to this nonsense [] all the time, it's horrible. I just hope they can get their act together and the children won't have to live in this type of environment."

The juvenile court continued the adjudication and disposition hearing in order for the parties to participate in mediation. In the meantime, the court ordered the children released to their mother on the condition that she remain in a domestic violence shelter and continue with her domestic violence counseling. The department reported that father was participating in parenting classes.

Mediation was unsuccessful, and the juvenile court conducted the combined adjudication and disposition hearing on September 24, 2009. The children's mother pled no contest to the allegations in the petition, and father submitted to the petition on the basis of the documentary evidence. Following argument of counsel, the juvenile court sustained the petition as amended, and ordered father to participate in domestic violence and parenting classes, an alcohol program with random testing, individual counseling, and conjoint therapy when appropriate. This appeal followed.

DISCUSSION

I. Father's Constitutional Challenge to Section 300, Subdivision (a).

Section 300, subdivision (a), provides that a child comes within the jurisdiction of the juvenile court and is a dependent of the court when: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.”

For the first time on appeal, father contends that this statute is unconstitutionally vague and violates due process because it does not define “serious physical harm,” and therefore fails to properly delineate permissible and proscribed behavior. But as the department points out, we need not consider father’s constitutional challenge because his appeal can be determined without resort to deciding the constitutional validity of section 300, subdivision (a). It is well established that “courts should not decide constitutional questions unless compelled to do so.” (*People v. Marsh* (1984) 36 Cal.3d 134, 144; *People v. Williams* (1976) 16 Cal.3d 663, 667 [“we do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us”]; *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65–66 [same]; *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 856 [same].) Because we can affirm the juvenile court’s findings based on the counts contained in section 300, subdivision (b), we need not decide the constitutional validity of section 300, subdivision (a) in order to dispose of this appeal. (See *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [jurisdiction under one subdivision is sufficient]; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

II. Substantial Evidence Supports the Court’s Jurisdictional Findings.

A. Standard of Review

When the sufficiency of the evidence to support a juvenile court’s finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) “If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court’s findings. All reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court’s order. [Citation.]” (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.)

B. Section 300, Subdivision (a)

The plain language of section 300, subdivision (a) provides that a child comes within the jurisdiction of the court if he or she “has suffered, . . . serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” The evidence here clearly established that father repeatedly physically abused his children. He grabbed the backs of their necks with such force that it caused redness, and was so painful that it would make Z.P. and R.P. cry. Father also hit his children, slapped them and sometimes used a belt to spank them, leaving marks and bruises. Father’s attempts to minimize his behavior, particularly his “clutch,” only serve to demonstrate that dependency court intervention was necessary. To the children, this act was not a simple form of discipline, but dangerous behavior that caused them unreasonable pain and suffering. The children were afraid of father, and B.P. wanted nothing to do with him. The evidence of father’s repeated physical abuse was sufficient for the court to sustain the section 300, subdivision (a) count. (See *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470 [the focus of the juvenile court is whether the child has been abused and, if so, how to safeguard him or her from repeated attacks].)

Additionally, section 300, subdivision (a) allows a court to assume jurisdiction if “there is a substantial risk that the child will suffer, serious physical harm,” and that “a

court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm." The evidence was sufficient to show that the children were at risk of future harm. Z.P. stated that the abuse still happened when they visited father, and she expressed a belief that father could still hurt her and her siblings "very bad." She stated that father is stronger than she and her siblings and could leave bruises, and that they had seen how father had physically abused their mother.

Accordingly, the juvenile court's finding that the children were described by section 300, subdivision (a) was correct.

C. Section 300, Subdivision (b)

Section 300, subdivision (b) provides that a child comes within the jurisdiction of the juvenile court if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

The juvenile court sustained the petition on two counts under section 300, subdivision (b): count b-5 based on father's unresolved history of alcohol abuse, and count b-6 based on father's unresolved history of domestic violence with the children's mother. Father argues this was error because "[a]ll alleged domestic violence and alcohol abuse were in the distant past, and presented no present risk to the children's well being." But the evidence is to the contrary.

With respect to count b-5, Z.P. told the social worker in her first interview that she would see her father drunk, though she later stated that he was not drinking anymore. After the petition was filed, B.P. stated that father is "always drinking beer." The evidence clearly showed that father often engaged in physical violence after drinking, not

only against the children, but also their mother. Although father has been attending Alcoholics Anonymous meetings and claims to have been sober since January 2009, he has no sponsor and his period of sobriety is quite short given his longstanding history of alcohol abuse and the resulting damage it has caused. Viewing the evidence in the light most favorable to the court's order, we are satisfied that the juvenile court correctly found that father continues to have an unresolved history of alcohol abuse that endangers the children's health and safety and places them at risk of serious harm.

Substantial evidence also supports the juvenile court's finding under count b-6 that father has an unresolved history of domestic violence that endangers the children's health and safety and places them at risk of serious harm. In her first interview with the social worker, Z.P. reported that father and her mother were still fighting, despite not living together, and that there was a lot of yelling between them which made her cry. At the team decision meeting, the parents continued to degrade each other. The evidence was undisputed that the parents have a longstanding history of domestic violence, often in front of the children. And even father admitted that he and the children's mother have conflicts that were affecting the children and "that it needs to stop." It is clear that "domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

III. Dispositional Order.

Father argues that in the event we reverse the juvenile court's jurisdictional order, the dispositional order must also be vacated. Because we are not reversing the jurisdictional order and father has not provided us with any other basis for reversing the dispositional order, that order is affirmed as well.²

² On April 2, 2010, the department filed a motion asking the court to consider post-judgment evidence of a proceeding held on March 29, 2010, wherein the juvenile court

DISPOSITION

The juvenile court's jurisdiction and disposition orders are affirmed.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ

terminated jurisdiction to all three children. The department argues this subsequent order renders moot father's challenge to the dispositional order. In light of our affirmation of the juvenile court's dispositional order, we deny the department's motion.